

APPEAL NO. 030052
FILED FEBRUARY 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 19, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to lifetime income benefits (LIBs). The claimant appealed, arguing that the overwhelming evidence shows that the claimant's bilateral arm/wrist/hand injuries are such that she has lost substantial use of her hands at or above the wrists and is such that she cannot get and keep employment requiring the use of her hands. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant has taken the position that she is entitled to LIBs under Section 408.161(a)(3) because she has "loss of both hands at or above the wrist." Subsection (b) provides: "For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of that body part." We have previously discussed this issue, stating as follows in Texas Workers' Compensation Commission Appeal No. 011034, decided June 26, 2001:

In Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994, we stated that the standard for determining whether a claimant is entitled to LIBS under the 1989 Act is the same as it was under the old law. Citing Travelers Insurance Company v. Seabolt, 361 S.W.2d 204, 206 (Tex. 1962), we noted that the test for **total loss of use** is whether the member (here the claimant's hands) possesses any substantial utility as a member of the body or whether the condition of the injured member is such that it keeps the claimant from getting and keeping employment requiring the use of the member. In Texas Workers' Compensation Commission Appeal No. 952100, decided January 23, 1996, we noted that the Seabolt test is disjunctive and that claimant need only satisfy one prong of the test in order to established entitlement to LIBS. See *also* Texas Workers' Compensation Commission Appeal No. 941065, decided September 21, 1994. [Emphasis added.]

In this case the hearing officer determined that the claimant "has the use of both her upper extremities," that the claimant has the ability to work at the sedentary to light physical demand level with lifting restrictions of 20 pounds, and that the claimant's compensable injury "is not such that she has lost substantial use of her hands at or above the wrists and is not such that she cannot get and keep employment." These factual determinations are supported by the evidence, which includes a comprehensive occupational rehabilitation program physical abilities discharge summary.

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**ACTING SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Susan M. Kelley
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Chris Cowan
Appeals Judge